

§ 1952.364

health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

[59 FR 42497, Aug. 18, 1994]

§ 1952.364 [Reserved]

§ 1952.365 Level of Federal enforcement.

(a) Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter, under which an operational status agreement has been entered into between OSHA and New Mexico, effective October 5, 1981, and based on a determination that New Mexico is operational in issues covered by the New Mexico occupational health and safety plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR parts 1910, 1926 and 1928 except as provided in this section. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to:

(1) Complaints filed with the U.S. Department of Labor alleging discrimination under section 11(c) of the Act (29 U.S.C. 660(c));

(2) Enforcement with respect to private sector maritime employment including 29 CFR parts 1915, 1917, 1918, 1919 (shipyard employment; marine terminals; longshoring and gear certification), and general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which issues have been specifically excluded from coverage under the State plan;

(3) Enforcement in situations where the State is refused and is unable to obtain a warrant or enforce its right of entry;

(4) Enforcement of new Federal standards until the State adopts a comparable standard;

(5) Enforcement of unique and complex standards as determined by the Assistant Secretary;

(6) Enforcement in situations when the State is temporarily unable to exercise its enforcement authority fully or effectively;

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(7) Enforcement of occupational safety and health standards at all Federal and private sector establishments on military facilities and bases, including but not limited to Kirkland Air Force Base, Fort Bliss Military Reservation, White Sands Missile Range Military Reservation, Holloman Air Force Base, Cannon Air Force Base, Fort Wingate Military Reservation, Fort Bayard Veterans' Hospital, Albuquerque Veterans' Hospital, Santa Fe National Cemetery;

(8) Enforcement of occupational safety and health standards, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation and lands under the control of a tribal government;

(9) Enforcement of occupational safety and health standards with regard to Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; and

(10) Investigations and inspections for the purpose of the evaluation of the New Mexico plan under sections 18(e) and (f) of the Act (29 U.S.C. 667 (e) and (f)).

(b) The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in New Mexico.

[62 FR 49911, Sept. 24, 1997, as amended at 65 FR 36629, June 9, 2000]

§ 1952.366 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Room 602, 525 Griffin Street, Dallas, Texas 75202; and New Mexico Environment Department, Occupational Safety and Health Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

[59 FR 42497, Aug. 18, 1994]

§ 1952.367 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved New Mexico's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b) In accordance with Subpart E of part 1953 of this chapter, New Mexico's State plan amendment, dated January 3, 1997, excluding coverage of all private sector employment on Federal military facilities and bases (see § 1952.365), and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation and lands under the control of a tribal government, from its State plan was approved by the Acting Assistant Secretary on September 24, 1997.

[59 FR 14556, Mar. 29, 1994. Redesignated at 59 FR 42496, Aug. 18, 1994, as amended at 62 FR 49911, Sept. 24, 1997]

Subpart EE—Virginia

§ 1952.370 Description of the plan as initially approved.

(a) The Virginia Department of Labor and Industry is the agency responsible for administering the plan and the Virginia Department of Health is designated as responsible for occupational health matters. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1) and all safety and health standards adopted by the Secretary of Labor, except those found in 29 CFR parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking and longshoring), will be enforced by the State upon approval of the plan by the Assistant Secretary. The State will retain its existing standard applicable to ionizing radi-

ation. New Federal standards will be adopted by the Safety and Health Codes Commission within 6 months after Federal promulgation.

(b)(1) The plan includes enabling legislation passed by the Virginia legislature in February 1973, and amendments thereto enacted in 1975 and 1976. The Commissioner of the Department of Labor and Industry will have authority to enforce and administer laws regarding the safety and health of employees. Safety inspections will be conducted by the Department of Labor and Industry whereas health inspections will be conducted by the Department of Health. The Department of Labor and Industry will issue citations, set abatement dates, and issue summons and/or warrants for a civil district court determination of violations and assessment of proposed penalties for such safety and health violations. Appeals of the district court's determination shall be to the circuit court sitting without a jury. Fire safety inspections and enforcement will be provided by agreement with the State Fire Marshal. The State plan provides for the coverage of all employees including coverage of public employees within the Commonwealth with the exception of maritime workers, employees of the United States, and employees whose working conditions are regulated by Federal agencies other than the U.S. Department of Labor under section 4(b)(1) of the Occupational Safety and Health Act of 1970. The Commissioner is authorized to establish a program applicable to employees of the State and its political subdivisions.

(2) The legislation also insures inspections in response to employee complaints; right of employer and employee representatives to accompany inspectors; notification to employees or their representatives when no compliance action is taken as a result of alleged violations; notification to employees of their protections and obligations; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of